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IN THE

# Supreme Court of the United States

October Term, 1966

No. 620

ACRON INVESTMENTS, INC., VELTURON CORPORATION, METRIM CORPORATION, FULLERTON COUNTRY CLUB, C. S. JONES, EDITH B. JONES, LOS COYOTES COUNTRY CLUB, BELLEHURST COUNTRY CLUB, KENNETH G. WALKER and NANCY M. WALKER,

*Petitioners,*

*vs.*

FEDERAL SAVINGS & LOAN INSURANCE CORPORATION,

*Respondent.*

**Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.**

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*Petitioners,*

*vs.*

FEDERAL SAVINGS & LOAN INSURANCE CORPORATION,

*Respondent.*

## Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

*To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:*

Petitioners Acron Investments, Inc., Velturon Corporation, Metrim Corporation, Fullerton Country Club, C. S. Jones, Edith B. Jones, Los Coyotes Country Club, Bellehurst Country Club, Kenneth G. Walker and Nancy M. Walker, pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered on June 30, 1966.

## Opinion Below.

The opinion of the United States Court of Appeals for the Ninth Circuit is not yet reported. A copy of the opinion is attached as an appendix to this petition.

## Jurisdiction.

The jurisdiction of this Court is invoked under 28 USCA 1254(1).

Each petitioner raised questions which are sought to be reviewed by this petition as follows:

1. By motions to dismiss the complaint in the United States District Court for the Southern District of California on the ground that the United States District Courts do not have jurisdiction of civil actions commenced by the Federal Savings & Loan Insurance Corporation solely on the ground that such corporation is the plaintiff.

2. On appeal to the United States Court of Appeals for the Ninth Circuit from the order of the District Court denying said motions to dismiss.

## Questions Presented.

1. Do the United States District Courts have original jurisdiction of civil actions commenced by the Federal Savings & Loan Insurance Corporation solely on the ground that such corporation is the plaintiff?

2. Is the Federal Savings & Loan Insurance Corporation an agency of the United States within the meaning of 28 USCA 1345?

## Statutes Involved.

28 USCA 451:

"As used in this Title . . .

"The term 'agency' includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense."

28 USCA 1345:

"Except as otherwise provided by Act of Congress, the District Courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress."

28 USCA 1349:

"The District Courts shall not have jurisdiction of any civil action by or against any corporation on the ground that it was incorporated by or under an Act of Congress, unless the United States is the owner of more than one-half of its capital stock."

## Statement of the Case.

This is a civil action commenced by the Federal Savings & Loan Insurance Corporation (hereinafter "FSLIC") in the United States District Court for the Southern District of California. The complaint seeks the foreclosure of deeds of trust on real property in Orange County, California. The trust deeds were given

to secure loans made by Long Beach Federal Savings & Loan Association (hereinafter "Long Beach Federal"), which is a savings and loan association in California. Prior to suit Long Beach Federal assigned the trust deeds and the notes they secure to FSLIC. There is no federal question involved in this case. There is no diversity of citizenship between the plaintiff and any defendant. If Long Beach Federal had retained the notes and trust deeds instead of assigning them to FSLIC, Long Beach Federal could not have sued in the United States District Court.

FSLIC was incorporated by Act of Congress in 1934. (12 USCA 1725.) FSLIC is the counterpart of the Federal Deposit Insurance Corporation (hereinafter "FDIC") in that FDIC was created to insure bank deposits, and the business of FSLIC is to insure the savings and loan associations. One important difference between the two is that FDIC was specifically authorized to sue and be sued in the federal courts, whereas FSLIC was not.

The statute creating FDIC provides:

> "Upon June 16, 1933, the Corporation[1] shall become a body corporate and as such shall have power —
>
> . . . .
>
> "Fourth. To sue and be sued, complain and defend, in any court of law or equity, State or Federal. All suits of a civil nature at common law or in equity to which the Corporation shall be a party shall be deemed to arise under the laws of the United States. . . ." (12 USCA 1819.)

[1]The words "the Corporation", as used in 12 USCA 1819, refer to the Federal Deposit Insurance Corporation. (12 USCA 1811.)

By contrast, the statute which created FSLIC one year later provides:

> "On June 27, 1934, the Corporation[2] shall become a body corporate, and shall become an instrumentality of the United States, and as such shall have power . . .
>
> "(4) To sue and be sued, complain and defend, in any court of competent jurisdiction in the United States or its Territories or possessions or the Commonwealth of Puerto Rico. . . ." (12 USCA 1725, subd. c).)

The words "court of competent jurisdiction" do not confer jurisdiction on the federal courts. (*Blackburn v. Portland Gold Mining Co.* (1900), 175 U.S. 571, 578-579 [20 Sup. Ct. 222, 44 L. Ed. 276]; *Shoshone Mining Co. v. Rutter* (1900), 177 U.S. 505, 506-507 [20 Sup. Ct. 726, 44 L. Ed. 846]; *DeLamar's Nevada Gold Mining Co. v. Nesbitt* (1900), 177 U.S. 523, 526-528 [20 Sup. Ct. 715, 44 L. Ed. 872].) Thus, when FDIC and FSLIC were created in 1933 and 1934, the Congressional intent was clearly expressed that FDIC was authorized to sue in the federal courts and FSLIC was not. All suits brought by FDIC were "deemed to arise under the laws of the United States." This language was omitted from the statute creating FSLIC.

There is only one reported decision (other than the case now under consideration) which has considered the question of the jurisdiction of the federal courts to entertain suits brought by FSLIC: *Federal Savings & Loan Insurance Corporation v. Third National Bank*

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[2]The words "the Corporation", as used in 12 USCA 1725, subd. (c), refer to the Federal Savings & Loan Insurance Corporation. (12 USCA 1725, subd. (a).)

(D.C.M.D. Tenn. 1945), 60 Fed. Supp. 110. At that time, the capital stock of FSLIC was not owned by the United States, but by the Home Owners Loan Corporation (hereinafter "HOLC"). The United States owned FSLIC's stock indirectly in that it owned all of the stock of HOLC, and the government controlled FSLIC to the same extent that it does today, but the fact remains: The government did not own the stock of FSLIC. 28 USCA 1349 provided then, and it provides now:

> "The District Courts shall not have jurisdiction of any civil action by or against any corporation on the ground that it was incorporated by or under an act of Congress, unless the United States is the owner of more than one-half of its capital stock."

The District Court held in *Federal Savings & Loan Insurance Corporation v. Third National Bank* that it did not have jurisdiction because the United States did not own any of the stock of FSLIC. The decision of the District Court in the *Third National Bank* case was reversed on appeal on the ground that the necessary decision involved a federal question. The opinion of the Court of Appeals does not purport to disturb the District Court's ruling that there was no jurisdiction in the absence of a federal question otherwise presented. (*Federal Savings & Loan Insurance Corporation v. Third National Bank* (6th Cir. 1946), 153 F. 2d 678, 680.)

There have been two changes in the stock ownership of FSLIC. In 1953 HOLC was dissolved and its assets transferred to the Treasury of the United States. (Act of June 30, 1953, C. 170, Section 21, 67 Statutes 126.) After that, and still prior to the com-

mencement of this action, all of the capital stock of FSLIC was retired. As of July, 1958, the United States again owned none of the capital stock of FSLIC. (Publication of the Federal Home Loan Bank (1961), The Federal Home Loan Bank System, Library of Congress, Catalogue Card No. 61-60073, pp. 24-26.) The court could have taken judicial notice of this fact, but in addition, the defendants established this fact for the record by requiring responses to requests for admissions and answers to interrogatories. [Clk. Tr. pp. 1240-1247.]

The facts, therefore, are no different today than they were when FSLIC was created and when the *Third National Bank* case was decided. When Congress created FDIC, the statute specifically provided that FDIC would have access to the federal courts. All suits brought by FDIC are "deemed to arise under the laws of the United States." This language was omitted from the FSLIC statute. The Congressional intent was expressed further in 28 USCA 1349 which provides that federal incorporation is not a basis of jurisdiction unless the government actually owns over one-half of the stock of the corporation. When FSLIC was created it was not contemplated that its stock would be owned by the government. The creating statute expressly provided that it would be owned by HOLC. (12 USCA 1725, subd. (b).) There was a period of five years between 1953 and 1958 when the stock was in the Treasury during which time it was being periodically retired. Since 1958 the situation is exactly the same as it was from 1934 to 1953. The government controls FSLIC in the same manner and to the same extent that it always has, and FSLIC performs the same function of insuring savings and loan associations as it always has.

The only other change that has occurred is the amendment to the Judicial Code in 1948. At that time 28 USCA 1345 was amended to permit not only the United States to sue in the federal courts, but also its agencies. At the same time Congress defined "agencies" of the United States for jurisdictional purposes. 28 USCA 451 provides that a corporate "agency" is one in which the United States has a "proprietary interest."

The Court of Appeals has held in this case that the government does have a proprietary interest in FSLIC, though it does not own any of its stock. The Court of Appeals relies on the Reviser's Notes which say that the words "proprietary interest" include "governmental corporations in which stock is not actually issued." But FSLIC is not such a corporation. Its stock has been actually issued. A more fundamental consideration is the fact that FSLIC, as distinguished from FDIC, was never intended to have access to the federal courts. FSLIC was not created as and is not a *non-stock* government corporation. When FSLIC was created it was clearly contemplated that it would issue stock and that it would not be owned by the United States. There was an interim period after dissolution of HOLC during which time FSLIC retired its stock. This temporary situation was created only because of the dissolution of HOLC. The situation has long since returned to *status quo*. FSLIC has issued stock, but its stock is not owned by the government. The United States has a *governmental* interest in FSLIC, but it does not have the *proprietary* interest of a shareholder or even the financial interest of the various savings and loan associations throughout the country which support FSLIC through payment of insurance premiums.

## Reasons for Granting Certiorari.

1. The decision of the United States Court of Appeals for the Ninth Circuit in this case is in conflict with the decision in *Federal Savings & Loan Insurance Corporation v. Third National Bank* (D.C.M.D. Tenn. 1945), 60 Fed. Supp. 110.

2. The opinion of the United States Court of Appeals for the Ninth Circuit in this case creates more problems than it purports to solve. Congress has declared that federal incorporation is not a basis of federal jurisdiction unless the United States owns over one-half of the stock of the corporation (28 USCA 1349), and that a corporate agency of the United States is one in which the government has a "proprietary interest." (28 USCA 451.) A proprietary interest is the interest of an owner. The decision of the Ninth Circuit equates the words "proprietary interest" with "government control." If stock ownership is immaterial (as stated by the decision of the Ninth Circuit), where is the line to be drawn with respect to the myriad other federally-created corporations? Following is a partial list of corporations, all of which are created by Act of Congress, which are required to report to Congress, and which perform a governmental or patriotic function:

The Agricultural Hall of Fame,
American Chemical Society,
American Historical Association,
The American Legion,
The American National Theater and Academy,
American Society of International Law,
American Symphony Orchestra League,
American War Mothers,

AMVETS (American Veterans of World War II),
Belleau Wood Memorial Association,
Big Brothers of America,
Blinded Veterans Association,
Blue Star Mothers of America,
Board for Fundamental Education,
Boy Scouts of America,
Boys' Clubs of America,
Civil Air Patrol,
Conference of State Societies, Washington, District of Columbia,
The Congressional Medal of Honor Society of the United States of America,
Daughters of the American Revolution,
Disabled American Veterans,
The Foundation of the Federal Bar Association,
Future Farmers of America,
Girl Scouts of America,
Grand Army of the Republic,
Jewish War Veterans, U.S.A., National Memorial, Inc.,
Ladies of the Grand Army of the Republic,
Legion of Valor of the United States of America, Incorporated,
Marine Corps League,
Military Chaplains Association of the United States of America,
Military Order of the Purple Heart of the United States of America,

National Academy of Sciences,
National Conference on Citizenship,
National Fund for Medical Education,
National Music Council,
National Woman's Relief Corps, Auxiliary to the Grand Army of the Republic,
The National Yeomen F,
Naval Sea Cadet Corps,
Navy Cl[illegible] of the United States of America,
Reserve Officers Association,
Sons of the American Revolution,
Sons of Union Veterans of the Civil War
United Spanish War Veterans,
United States Blind Veterans of World War I,
United States Olympic Association,
Veterans of Foreign Wars of the United States,
Veterans of World War I of the United States of America.

The United States government owns no stock in these corporations. Yet either directly or indirectly the Congress controls their activities. Are they "agencies of the United States" who may claim the original jurisdiction of the United States District Courts? Or does 28 USCA 1349 apply to suits instituted by these corporations which were incorporated under an Act of Congress?

3. The decision of the United States Court of Appeals for the Ninth Circuit in this case is in conflict with the constitution of the State of California and in conflict with the long-standing policy that the law of real property should be left to the states.

Article VI, Section 5, of the Constitution of the State of California sets forth a fundamental and basic jurisdictional rule with respect to actions involving title to real property:

> "The process of superior courts shall extend to all parts of the State; provided, that all actions for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon real estate, shall be commenced in the county in which the real estate, or any part thereof, affected by such action or actions, is situated. . . ."

It is clearly the policy of California, as expressed in its constitution, and the same is probably true of all States, that suits affecting title to real property must be brought in the county where the property is located. The federal courts can and often do apply state law, but the federal courts are not equipped to and do not sit in the various counties. By the same token what would prevent FSLIC from suing in the federal court in New York to foreclose a trust deed on California real property if it could serve the defendant in New York? It would be absurd to permit such litigation. Yet that would be perfectly proper under the decision in this case. The decision in this case necessarily holds that FSLIC can sue in any federal court anywhere regardless of the nature of the lawsuit. This points up the reason that Congress provided when it created FSLIC that FSLIC was not to sue in the federal courts as an "agency" of the United States. The nature of FSLIC's business is that it is likely to take assignments of trust deeds and mortgages from the local savings and loan associations which it insures. Such suits involve questions of state law and should be brought in the state courts.

## Conclusion.

Statutes relating to the jurisdiction of the federal courts are to be strictly construed. The right to bring suit in the federal courts is not a special privilege necessarily conferred upon all government instrumentalities. Jurisdictional statutes are not to be considered in any protective sense. Due regard for the independence of state governments requires that the federal courts scrupulously confine their own jurisdiction to the precise limits defined by statute.

No federal question is involved in this case. The action is solely one to foreclose deeds of trust on real property located in Orange County, California. The Constitution of the State of California requires that this suit be brought in Superior Court of the County of Orange. The mandate of the California Constitution has not been overruled, modified or altered by any Act of Congress.

The integrity of local government is one of the basic protections and bastions of individual liberty. It should not be watered down by the over-zealous conduct on the part of any instrumentality of the United States. A sound and just state constitutional provision should not be rendered impotent by an undue extension of the jurisdiction of the federal courts.

Respectfully submitted,

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## APPENDIX.

### Opinion of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals for the Ninth Circuit.

Acron Investments, Inc., Velturon Corporation, Metrim Corporation, Fullerton Country Club, C. S. Jones, Edith B. Jones, Los Coyotes Country Club, Bellehurst Country Club, Kenneth G. Walker and Nancy M. Walker, Appellants, vs. Federal Savings and Loan Insurance Corporation, Appellee. No. 20,724.

[June 30, 1966]

Appeal from the United States District Court for the Southern District of California, Central Division.

Before: BARNES, JERTBERG and ELY, Circuit Judges.

BARNES, Circuit Judge:

This is an appeal from an order of the district court, which denied motions by defendants to dismiss on the ground that the court lacked jurisdiction. The entire controversy on this appeal is whether the district court has jurisdiction to entertain the complaints. Accordingly, jurisdiction in the district court will be considered *infra*. This court has jurisdiction pursuant to 28 U.S.C. §1292(b), the district court having certified that the order involves a controlling question of law as to which there is substantial ground for differences of opinion, and that an immediate appeal may materially advance the ultimate termination of the litigation.

All of the defendants in this case were persons or corporations having interests in real property located in

Orange County, California, on which loans had been made by Long Beach Federal Savings & Loan Association. These loans were given in exchange for notes secured by deeds of trust on the real property involved. Long Beach Federal assigned the notes and deeds of trust to the Federal Savings & Loan Insurance Corporation (herein "Corporation").

On September 4, 1962 the Corporation filed a complaint in the United States District Court for the Southern District of California, Central Division, in 467 causes of action to judicially foreclose the deeds of trust and to secure deficiency judgments against the makers of the notes, their "alter egos," or their assignees. Some of the causes of action pray for ancillary relief such as a declaratory judgment regarding an escrow agreement involved in the trust deeds. The complaint alleged the jurisdiction of the district court was conferred by 12 U.S.C. §1725, 28 U.S.C. §1345, and 28 U.S.C. §1444. (CT 5.)

On December 22 and 27, 1965, the various defendants filed motions to dismiss the complaint on the ground that the district court lacked jurisdiction. Hearings were held and on January 14, 1966, the trial judge issued his "Order Denying Motions to Dismiss and Certifying Controlling Question of Law Pursuant to 28 U.S.C. Sec. 1292(b)," to which reference has been made. (CT 1248.) The order contained no reference to the jurisdictional grant upon which the court relied in dismissing the motions, and gives no suggestion as to the reasoning which led the court to that conclusion.

Appellants filed an application for permission to appeal pursuant to 28 U.S.C. §1292(b) with this court. The application was heard, and permission granted.

Later, some of the appellants filed in this court a motion to stay pre-trial proceedings in the district court until the determination of this appeal. This motion was granted.

The sole issue is whether the United States District Courts have jurisdiction of suits brought by the Federal Savings & Loan Insurance Corporation because it is such, when no other basis for jurisdiction exists.

The principal United States Code sections around which this argument centers are 12 U.S.C. §§1437(b), 1725(a) and (c); and 28 U.S.C. §§451, 1345, 1349.

12 U.S.C. §1725(a) reads:

> "(a) There is created a Federal Savings and Loan Insurance Corporation (hereinafter referred to as the 'Corporation'), which shall insure the accounts of institutions eligible for insurance as hereinafter provided, and shall be under the direction of the Federal Home Loan Bank Board and operated by it under such bylaws, rules, and regulations as it may prescribe for carrying out the purposes of this subchapter. The principal office of the Corporation shall be in the District of Columbia."

12 U.S.C. §1725(c) reads in part:

> "(c) On June 27, 1934, the Corporation shall become a body corporate, and shall be an instrumentality of the United States, and as such shall have power—
>
> * * *
>
> (4) To sue and be sued, complain and defend, in any court of competent jurisdiction in the United States or its Territories or possessions or the Commonwealth of Puerto Rico, and may be served by

serving a copy of process on any of its agents or any agent of the Federal Home Loan Bank Board and mailing a copy of such process by registered mail or by certified mail to the Corporation at Washington, District of Columbia."

12 U.S.C. §1437(b) reads, in pertinent part:

"(b) The Home Loan Bank Board which was, pursuant to Reorganization Plan Numbered 3 of 1947, established and made a constituent agency of the Housing and Home Finance Agency shall, from August 11, 1955, cease to be such a constituent agency and shall be an independent agency (including the Federal Savings and Loan Insurance Corporation) in the executive branch of the Government: . . ."

Chapter 85 (District Courts; Jurisdiction) of Title 28 defines the original jurisdiction of those courts. 28 U.S.C. §1345 reads:

"§1345. United States as plaintiff.

Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress."

The plaintiff herein is not the United States. Is it (a) an agency thereof, (b) expressly authorized to sue by Act of Congress?

The Federal Savings & Loan Insurance Corporation is by statutory enactment "included" within an "independent agency" and is itself an "instrumentality of

the United States" (12 U.S.C. §1725(c)) expressly authorized to sue by Act of Congress. (12 U.S.C. §1725-(c)(4).)

28 U.S.C. §451 also contains in the last paragraph of definitions the following:

> "The term 'agency' includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense."

This definition describes what the word "agency" includes. Does it exclude from the definition of "agency" that which is not specifically described in §451? We think not. An "independent agency" is no less an "agency" in the ordinary sense of the word whether it is described in §451 or not. In other words, §451 is not an all-embracing definition.

Reduced to its simplest terms, the argument of appellee is that it is either an independent agency of the United States, in which case jurisdiction is conferred by 28 U.S.C. §1345, or a corporation in which the United States has a proprietary interest within the meaning of 28 U.S.C. §451, and therefore an agency within the compass of 28 U.S.C. §1345. Appellants contend that in order to be an agency within the meaning of 28 U.S.C. §1345, a corporation must meet the requirements of 28 U.S.C. §1349 (federal incorporation not a basis for jurisdiction unless government owns at least one-half

of corporation's capital stock),[1] and since none of the Corporation's stock is directly owned by the United States the Corporation does not qualify.

Appellee's argument adopts the theory that its corporate form does not prevent its being considered an "agency of the United States." This argument is premised on at least two alternative grounds: first, that various code sections outside of Title 28, United States Code, refer to the Corporation as an "agency"; and secondly, that 28 U.S.C. §451 includes in the definition of "agency" for purposes of Title 28 "any corporation in which the United States has a proprietary interest" and in any event since §451 is phrased in the disjunctive the Corporation could be an "agency" within the meaning of 28 U.S.C. §451 without meeting the definition of the final phrase of the section which requires a proprietary interest. After considering these arguments, we are of the opinion that they possess merit, and hold that the district court did not err in finding that jurisdiction existed.

Even if we were required to look to §451 for the purpose of jurisdiction under 28 U.S.C., we believe it can be done, *i.e.*, it can be found to be an agency within §451. In the case of a corporation, one way of satisfying this definition of §451 is by showing that it is a corporation in which the United States has a proprietary interest. Appellants make much of an argument that, by force of 28 U.S.C. §1349, "proprietary in-

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[1]Title 28

"§1349. Corporation organized under federal law as party.

The district courts shall not have jurisdiction of any civil action by or against any corporation upon the ground that it was incorporated by or under an Act of Congress, unless the United States is the owner of more than one-half of its capital stock."

terest" in the case of corporations can only mean that the United States must own at least one-half of the capital stock of the corporation, and that §451 is not satisfied in this case because the United States owns none of the stock of the Corporation. On the surface, appellants' argument appears to have merit, for if corporations were permitted to establish jurisdiction in cases where the United States did not own at least one-half of the stock, 28 U.S.C. §1349 would be rendered a nullity. But appellants overlook the legislative history of the Federal Savings and Loan Insurance Corporation in making this argument. When the Corporation was first set up by Congress in 1934, the total stock subscription was made and paid for by the Home Owners' Loan Corporation, another federal creation. In 1948, title to all the stock was transferred to the Secretary of the Treasury. In 1950 the Corporation was directed by statute to retire its stock, and this process was completed in 1958. Thus from 1948 through 1958 the United States owned all of the stock of the Corporation. At present *there is no outstanding stock to be owned.*

The Reviser's Note to 28 U.S.C. §451 states that "The definitions of agency and department conform with such definitions in section 6 of the revised Title 18, Crimes and Criminal Procedure," and the Reviser's Note under 18 U.S.C. §6 states that "The phrase 'corporation in which the United States has a proprietary interest' is *intended to include those governmental corporations in which stock is not actually issued,* as well as those in which stock is owned by the United States. It excludes those corporations in which the interest of the Government is custodial or incidental." (Emphasis added.)

Putting aside the question of the status under 28 U.S.C. §1349 of a governmental corporation whose stock has been retired, we are faced with a definition of "agency" in 28 U.S.C. §451 which, according to the attendant reviser's notes, includes corporations without any outstanding stock. And the reviser's notes are authoritative in interpreting the Code. *United States v. Nat. City Lines,* 337 U.S. 78, 81 (1949). Since the control which Congress and the United States exercise over the Corporation is clearly more than "custodial or incidental," it would appear that the Corporation fits within the definition of "agency" of 28 U.S.C. §451 and thus within the terms of 28 U.S.C. §1345.

Although under the circumstances existing in this case it is not necessary to so decide, we could not reach a contrary result even if we did not believe that the reviser's notes were authoritative in this case. It would be difficult to hold that a governmental corporation in which the government at one time owned all stock, but which had retired its stock, would not meet the definition of 28 U.S.C. §451 merely because it no longer had stock outstanding which the United States could own in order to satisfy 28 U.S.C. §1349. Where would ownership lie?

Having found that the Corporation is an "agency" within the meaning of the final clause of 28 U.S.C. §451, we deem it unnecessary to pass upon the other arguments advanced by appellee to support the judgment of the district court.

The order of the district court is *affirmed.*

# In the Supreme Court of the United States

OCTOBER TERM, 1966

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No. 620

ACRON INVESTMENTS, INC., ET AL., PETITIONERS

*v.*

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

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**MEMORANDUM FOR THE UNITED STATES IN OPPOSITION**

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We respectfully invite the attention of the Court to the following facts which show that the petition was filed out of time:

On June 30, 1966, the Court of Appeals for the Ninth Circuit affirmed the district court's decision in this case, denying petitioners' motion to dismiss the action brought by respondent (Pet. App. 1, 8). No petition for rehearing was filed. The petition for a writ of certiorari was filed on October 3, 1966, which was 95 days after the decision of the Court of Appeals.



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Section 2101(c) of Title 28 provides that "any writ of certiorari intended to bring any judgment or decree in a civil action * * * before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree." Since these limits are jurisdictional, it is respectfully submitted that the petition should be denied as untimely.

THURGOOD MARSHALL,
*Solicitor General*

NOVEMBER 1966.

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